
AGENCY RESPONSES

Appendix 2

Comments were solicited from the Department of Health and the Office of Financial Management. Their written comments are included in this appendix.

Agencies and organizations represented by advisory group members also provided written comments, which are included in this appendix. Submitting comments were:

- Children's Hospital & Regional Medical Center
- Home Care Association of Washington
- Washington State Hospice Organization
- Washington State Hospital Association
- Washington State Medical Association

Changes were made in the final report in response to these and other comments. In general, additional background information was provided on the CON program and the characteristics on Washington's health care system. For example, a table was added in Chapter 1 comparing Washington with the U.S. on various indicators of health care use and costs, and rates of HMO penetration and insurance coverage. Two charts were added to Chapter 1 describing the volume of CON activity over time and trends in the relative proportion of hospital and non-hospital services.

In addition to these changes, Chapter 2 was expanded to include discussion sections that elaborated on the findings.



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January 7, 1999

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JAN - 7 1999

JLARC

The Honorable Cathy McMorris
Washington State Representative
Joint Legislative Audit and Review Committee Chair
Post Office Box 40910
Olympia, Washington 98504-0910

Dear Representative McMorris:

The Department of Health has received the Joint Legislative Audit and Review Committee's preliminary report the "Effects of Certificate of Need and Its Possible Repeal". We appreciate having this opportunity to respond to the report.

The department appreciates the work of JLARC staff and the Health Policy Analysis Program to prepare this study. We also commend the decision to engage two independent peer reviewers to validate the objectivity of the report. Too often studies of this type have been summarily dismissed by those who disagree with the results on the basis that the report was the product of biased investigators.

The department has carefully reviewed the findings of the report. Though not surprised, we are struck by the difficulty the authors had in reaching definitive conclusions regarding the future of Washington's certificate of need program based upon the research into other states experiences.

The experience of states that have repealed their certificate of need programs is important information that can and should be used to inform deliberations and decision making in Washington. But it seems clear that the mix of conditions that exist in each state are highly influential in determining the utility of the program to each state. Consequently, the experience of one state cannot be readily applied to another. No better evidence of this exists than the fact that 37 of the 50 states that operated certificate of need programs as part of the National Health Planning and Resources Development program continued to operate programs after that federal law was repealed in 1986. Two of the states that repealed their laws subsequently reinstituted some form of certificate of need.

The environment that spawned the certificate of need program in 1971 in Washington has changed dramatically. The program has been modified over the years in response to arguments that the program needed to change with the times. Whether the piecemeal changes succeeded as they were intended is an open question. There is no doubt, however, that Washington consumers of health care services continue to be faced with the problem of finding an appropriate balance among competing desires for easy access to care, highest quality care, when it is delivered, and reasonable cost for care



that has been received. The certificate of need program was developed and continues to serve as one tool for government to use to help Washington's citizens identify and achieve that balance point.

The department finds the results of the focus groups and key informant interviews, which are presented as the strengths and weaknesses of Washington's certificate of need program, particularly informative and believe they are very important in the discussion of the future of certificate of need. They are significant because they are conclusions drawn from the opinions of those who have actual experience with Washington's program. Therefore, they most accurately reflect the certificate of need environment in Washington. In particular, they highlight public values that having a certificate of need program supports, such as quality, access, foresight in developing the health system, and the opportunity for the public to participate in decisions about the development of the health system that serves them.

The JLARC report will be very useful in future deliberations. However, it does not provide the information that would be needed to substantiate that the certificate of need program should now be repealed, how parts of it should be substantially modified, if indeed they should, or how the state might substitute other mechanisms to achieve the values that underlie the program.

Nonetheless, the report's findings, conclusions and recommendations are a call for action and improvement.

DOH believes that a central feature of any improvement process is to include the regulated communities, their customers and their client providers. We plan to establish a "Roundtable" workgroup. Invitations to participate will be issued to the professional associations involved as well as selected individual activities, local health jurisdictions, appropriate members of the public and non-DOH governmental representatives.

The first objective will be to develop a clear statement of public policy regarding regulation of supply in the current health care environment. This is necessary to provide guidance to program activity. The second objective will be to identify methods to improve the effectiveness and efficiency of the program itself, including assuring clarity and consistency of decisions.

Ideas the department will present to the work group to include:

1. Separating the Determination of Reviewability (DOR) phase from the application review phase and making DOR a distinct, self-funding, and more open process that allows for public input and comment;
2. Developing an advisory mechanism to address matters of effective policy implementation in the dynamic health care market;
3. Work that will provide verification of compliance with each certificate, and possibly some assessment of the effects or outcomes of awarded certificates;

The Honorable Cathy McMorris
Page Three
January 7, 1999

4. Requiring the applicant to employ a CPA firm to prepare the economic analysis, rather than having the program do this work; and
5. Pre-publication of Proposed Decisions, providing for a final comment period before final issuance.

DOH has already taken three actions intended to improve internal operations and help assure insulation of decisions from unnecessary pressure:

1. The program has been moved from the Office of the Assistant Secretary for Health Systems Quality Assurance to a line division, Facilities and Services Licensing;
2. The program is preparing new applications for two types of projects that are shorter and easier to use. The program is also working on new applications for other types of applications; and
3. The program has completed a set of detailed flow charts of the entire decision making process. These are intended to serve as tools for assessing the efficiency and practicality of current methodologies.

The search for other opportunities for improvement for the department and the workgroup to explore will continue as part of the department's commitment to ongoing process and quality improvement.

Thank you for both the opportunity to participate in the development of the JLARC report on the "Effects of Certificate of Need and Its Possible Repeal" and to reply to the preliminary report.

Sincerely,



MARY C. SELECKY
Acting Secretary



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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January 25, 1999

The Honorable Cathy McMorris
Washington State Representative
Joint Legislative Audit and Review Committee Chair
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JLARC

Dear Representative McMorris:

The Joint Legislative Audit and Review Committee's proposed final report the "Effects of Certificate of Need and Its Possible Repeal" has been reviewed. The report's findings demonstrate that careful consideration has been given to the key issues related to supply regulation in today's medical market. Further, the study has carefully considered local, state and national perspectives on the key issues. It is significant that following this careful analysis it has not been possible to reach definitive conclusions regarding actions that should be taken to preserve, modify or repeal Washington's certificate of need program.

The certificate of need program has undergone many modifications since it was first enacted in 1971 in an effort to keep the program current with changes in the medical care market place. Continuing this tradition the Department of Health has recently made administrative changes that will increase the effectiveness of the program by better aligning complementary functions of the certificate of need program and health facilities licensing. In the process one of the concerns raised in the report, that the program does not provide ongoing monitoring of the results of its decisions, is beginning to be addressed.

The Department of Health is implementing a strategic approach to determining changes to the program that are needed. The work that has been done by the JLARC and its contractors to produce this report will make a significant contribution to the work of the department.

Thank you for the opportunity to comment on this report.

Sincerely,

A handwritten signature in cursive script that reads "Dick Thompson".

Dick Thompson
Director



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JLARC

December 18, 1998

Honorable Cathy McMorris, Chair
Joint Legislative Audit and Review Committee
P.O. Box 555
Colville, WA 99114

Dear Representative McMorris:

We are writing to comment on the preliminary report titled, "Effects of Certificate of Need and Its Possible Repeal" which was presented to the Joint Legislative Audit and Review Committee (JLARC) on December 11, 1998.

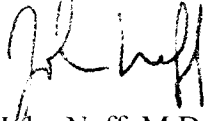
We understand that the primary purpose of the report was to study the effect of the Certificate of Need program (CON) and its possible repeal on the cost, quality, and availability of five health services – hospitals, ambulatory surgery, kidney treatment, home health, and hospice, as well as on charity care and health services in rural areas.

Even though pediatric tertiary care was not formally evaluated, we would like to bring your attention to the region's pediatric health care needs and best practices.

The Northwest and Washington state in particular has the lowest cost of inpatient hospital care in the nation. The Data Advantage report (Louisville, Kentucky) released in October 1998 reported that Washington hospitals charged approximately thirty-one percent less for care nationally in 1997. In pediatrics, this is due in part to the lack of unnecessary duplication of services which we have worked hard to maintain over the years. When the pool of patients is small and fixed, such as in pediatrics, the forces of competition work in the opposite direction. Instead of improving quality at lower cost, competition often decreases quality at higher costs. As a result, there is an important public health purpose served by continuing certificate of need regulation for inpatient pediatric services.

Even though inpatient pediatrics represents a small percentage of the total inpatient services and the report did not specifically study pediatrics, we hope you will consider incorporating a mention of this population in the final report.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Neff', written over the printed name.

John Neff, M.D.

Director, Center for Children with Special Needs and Chronic Health Conditions
Children's Hospital and Regional Medical Center

cc: Ronald D. Perry, Staff Coordinator, Joint Legislative Audit and Review Committee
Aaron Katz, Director, University of Washington Healthy Policy Analysis Program
Greg Vigdor, Washington State Hospital Association
Len McComb, Washington State Medical Association

Home Care Association of Washington

P.O. Box 2016 • Edmonds, WA 98020-9516 • Telephone 425/775-8120 • FAX 425/771-9588
Diane Higgins, President Donna Cameron, CAE, Executive Director

December 28, 1998

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JLARC

Representative Cathy McMorris, Chair
Joint Legislative Audit and Review Committee
506 16th Ave. S.E.
Olympia, WA 98501-2323

Re: "Effects of Certificate of Need and Its Possible Repeal"

Dear Representative McMorris:

The following comments are written on behalf of the Home Care Association of Washington, a statewide organization of over 75 licensed home health, hospice and home care agencies. We appreciate the opportunity to provide JLARC with written comments on the above referenced report.

The University of Washington's Health Policy Analysis Program (HPAP) performed an extensive amount of work in the preparation of this draft report. Their efforts provide the framework for our recommendations and suggestions, and for that we express our gratitude.

The bottom line is that the UW's study was unable to determine whether certificate of need (CON) should be retained or repealed. This does not mean that the study was a failure. In fact, HPAP's decision that there was insufficient information to support a recommendation was an acknowledgment that certificate of need is a very, very complex subject, with variance from state to state not only in its implementation, but also on the impacts of repeal. Because of this extreme level of variability and complexity, we believe it would be extraordinarily difficult for an economic analysis study to yield conclusive results, because it would be based on experiences in other states. We think the better course of action is to direct this same level of resources, as could be appropriated to a study, to improving the current certificate of need system. In fact, it may make sense for HPAP to develop a plan to strengthen the current certificate of need system. The suggestions proposed by HPAP in this report would be a good starting place for discussion.

We believe that strengthening the existing system makes sense for three reasons. First, HPAP did not find a compelling reason for repeal. In fact, one of the few conclusions that HPAP felt comfortable in drawing was that CON did not impede the development of managed care (page iii). Without compelling reasons for repeal, and the identification of substantial potential risks if repeal is undertaken, the wise public policy course is to strengthen the current system and evaluate it again in the near future.

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Second, concerning the proposed economic study, we've already stated that it is unlikely to provide conclusive results. We call to your attention HPAP's statement about the limitations of such a study:

"An economic analysis of CON repeal cannot answer all questions. In fact, such a study can directly help us understand only *some* of the many effects of deregulation—economic and financial effects—and we can only *infer* how these impacts might affect quality, access, and charity care. In addition, since Washington has not repealed CON, we cannot study the actual effects of deregulation on health care markets in this state. Therefore, the proposed analysis must develop *assumptions* based on the experiences in other states with similar health care markets and policy environments, and must *simulate* how markets and providers in Washington would react if CON is repealed." (emphasis added)

While we have great respect for HPAP, we do have concerns that this economic study would not produce any conclusions because of the same problems encountered in the current study...but in the process considerable time would need to be expended by JLARC staff, JLARC, and stakeholders. As we've stated earlier, we believe a more appropriate use of resources would be to focus on improvements to the current system. However, if the study is undertaken we are very concerned that the appropriate level of analysis be done. In our opinion that's a combination of the Low and High Option.

Third, the certificate of need process isn't broken. Yes, it does need some remodeling, but let's not demolish the house in the process. Its structure is sound. We would assert that the program's existence in Washington state has strongly contributed to cost-effective, quality, and accessible home health and hospice services. In fact, for home health services, Washington is one of the most cost effective states in the nation. Based on the most recent data available, our state is ranked 50th in the average number of Medicare home health visits per recipient. The actual figures are that Medicare recipients receive an average of 34 visits in Washington state, while the national average is 74 visits. In addition, while the average Medicare payment per recipient of home health is \$4,660, in Washington it's \$2,851, ranking us 47st in the nation. I'm aware that equally compelling data is available on hospitals.

A final thought. We did not find that the comments of key informants were helpful. The identity of key informants is not listed in this report, so it's difficult to evaluate their comments, without knowing their level of expertise.

Thank you again for the opportunity to comment.

Sincerely,

Donna Cameron, CAE

Donna Cameron, CAE, Executive Director
Home Care Association of Washington

Franciscan Health System

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JLARC

The Honorable Cathy McMorris, Chair
Joint Legislative Audit Review Committee
506 16th Ave. S.E
Olympia, WA 98501-2323

Dear Representative McMorris,

The Washington State Hospice Organization WSHO represents 28 hospices providing specialized end of life care to thousands of terminally ill Washingtonians each year and on-going support to the bereaved.

On behalf of our provider members, we wish to thank you for the opportunity to offer comments regarding the Preliminary Report on The Effects of Certificate of Need and Its Possible Repeal. We wish to applaud JLARC for its work in commissioning this study and in its attempt to research and analyze this very complex area of health care policy. We also commend JLARC's choice in using the University of Washington's Health Policy Analysis Program for its impartial review and its approach of including industry providers throughout the study process.

As the smallest of the five industries for which the Study examined the effects of CON and its possible repeal, we have been concerned about the study's broad scope and an inherent difficulty in devising a methodology to provide definitive information regarding the relationship between CON and the hospice industry. Unfortunately, the study results bear out our concerns in the form of a startling lack of specificity regarding the impact of repealing/maintaining CON on the quality, cost or access to hospice care in any state, let alone our own state. In certain instances, the study refers to home health and hospice as a single industry. However, it is important to individually acknowledge home health as an industry somewhat like hospice - but vastly different in its service delivery model, market size, reimbursement methodologies, etc.

With that said, WSHO agrees, in principle, with many of the assertions expressed in the study comments.

- First, we continue to believe that CON has been successful in maintaining quality hospice care in our State by compelling prospective providers to demonstrate their proposed structure and process of care including planning for appropriate staffing levels and a network of ancillary services. In fact,

HCFA surveyors state that Operation Restore Trust audits show significantly less findings of fraud and abuse in states with CON laws for hospice.

- Second, we believe CON serves to assure that new providers will be financially viable, and therefore able to maintain services to a vulnerable patient population.
- Third, we agree that there are shortcomings with CON law as it currently exists, and encourage JLARC to seriously consider the study's recommendation to reform CON law to account for changes in the healthcare marketplace and to provide continual monitoring of quality and access concerns.

In summary, due to the lack of concrete findings, prudent action would be to move slowly – either by maintaining the status quo or moving forward with reforms that would clearly be beneficial to everyone affected by CON laws, yet would not open the floodgates to unwarranted change and unanticipated outcomes.

Sincerely,

A handwritten signature in black ink, reading "Mark Rake-Marona". The signature is fluid and cursive, with the first name "Mark" and last name "Rake-Marona" clearly distinguishable.

Mark Rake-Marona, Director - Franciscan Hospice
Board Member, Washington State Hospice Organization
Member, JLARC CON Study Advisory Group

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Washington
State
Hospital
Association



December 18, 1998

The Honorable Cathy McMorris
Chair, Joint Legislative Audit and Review Committee
506 16th Avenue S.E.
P.O. Box 40910
Olympia, WA 98501-2323

Dear Representative McMorris:

Thank you for the opportunity to comment on the JLARC preliminary report on the "Effects of Certificate of Need and Its Possible Repeal". As requested, I will be brief in our comments, though, as you know, we have extensive thoughts on this topic.

From the origins of the study request in the State Legislature last year, the Washington State Hospital Association has had concerns over its scope and focus. We observed that the formal study questions posed by the legislature were quite narrow, and pondered over the decision to study only a limited range of the services currently subject to certificate of need. We also questioned whether JLARC could, with these severe limitations, conduct a study which would add any new information to our state's debate over certificate of need.

First, we are pleased with the effort put into the report, and its quality. JLARC staff, and the staff of the University of Washington's Health Policy Analysis Program, have done a very capable job of undertaking this difficult task and assembling this report. We also believe that it does provide some important new information to the debate based upon your finding that *"Because the state of Washington has not repealed or conducted a detailed analysis of CON in the context of local health care markets, these findings may not reflect the actual or likely experience in this state"*.

This has always been one of our primary concerns, i.e., that there is no clear answer as to what will happen if certificate of need is repealed in this state, and that we cannot determine our answer based on a mere observation of other state experiences. We have always been more than skeptical that the net result from repealing CN would be anything more than a major long term problem with respect to cost, access and quality goals. Again, we would echo the statement in

The Honorable Cathy McMorris
December 18, 1998
Page Two

the Policy Options that: *We make no recommendation about whether CN should be repealed or retained, because the available evidence does not support such a recommendation*".

Perhaps the uncertainty surrounding the impact of the repeal of certificate of need in Washington is best demonstrated by JLARC's analysis regarding health and hospital costs. The report suggests that national literature finds CN as not effective in controlling overall health care costs, and we have also heard staff make inferential remarks about the limitations of CN in controlling hospital costs. However, during the time when the study was being drafted, a national health data provider released a report showing that Washington hospitals charged almost a third less than the national hospital average charge in 1997. Hospitals in Washington also held their rate of increases per year from 1995 to 1997 to only 1.8%, again one of the lowest in the country. The fact that Washington also has one of the lowest numbers of hospital beds in the country should immediately trigger some major questions as to how one would translate the national CN finding to our own unique marketplace, as it suggests that limited supply has made a cost difference in our state.

With respect to the findings and comments on "access", we reiterate the great concerns we have stated earlier. The study primarily assesses issues around "charity care" and reaches no substantive conclusions. We believe that there would be serious consequences to the level and distribution of charity care should CN be repealed without explicit safeguards. We also believe that the broader topic of "community benefit" is the more appropriate measure, as hospitals, in particular, provide millions of dollars in access benefits to their communities which are not classified as charity care. Again, the repeal of CN would impact this.


Similarly, we believe that the analysis of rural health care seriously underestimates the potential impact of skimming profitable services off to new entities under an environment without CN. Currently, most rural hospitals (most of which are units of local government) are struggling financially, and many are

The Honorable Cathy McMorris
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Page Three

experiencing major losses. The implementation of the changes contained in the federal balanced budget act will likely add to these financial problems as the federal budget reductions escalate over time. If new entrants are allowed to skim off the few profitable services of these hospitals, this will clearly only raise the risk of financial failure higher for these hospitals, as well as the possible loss of access to health care in these rural communities.

Finally, we would note that we agree with the assessments of the weaknesses of the CN program. WSHA is willing to work with the legislature and other parties to develop a program which is better staffed, provides more ongoing review of the real impact of approved projects and is linked in a much stronger fashion to the changes in the health care marketplace and state health planning goals. Reforming the program offers far more hope than a "repeal" based almost entirely on a hope that the change will be positive.

Sincerely,


Greg Vigdor
Senior Vice President

Attachment

c: Peter Bylsma
Ron Perry

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DEC 23 1998

Washington State Medical Association

JLARC

Mark C. Adams, MD
President

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Peter K. Marsh, MD
Past President

Nancy J. Auer, MD
1st Vice President

Gary A. Goldfogel, MD
2nd Vice President

Samuel W. Cullison, MD
Secretary-Treasurer

Maureen A. Callaghan, MD
Assistant Secretary-Treasurer

Thomas J. Curry
Executive Director/CEO

December 22, 1998

The Honorable Cathy McMorris
Chair
Joint Legislative Audit and Review Committee
506 16th Avenue SE
Olympia, Washington 98501-2323

Dear Representative McMorris:

I would like to begin by thanking you, the members of the Joint Legislative Audit and Review Committee (JLARC), your staff and the staff of the Health Policy Analysis Program (HPAP) at the University of Washington for all the time, energy, thought and analysis that went into the recently completed study of the effects of Washington state's Certificate of Need (CoN) Program.

The Washington State Medical Association (WSMA) has reviewed the draft document and makes no recommendations. We believe the process by which the study was done was fair, thorough and inclusive. We also believe that the researchers in the HPAP did their best to identify available information about the CoN program throughout the United States.

As you already know, the WSMA has actively promoted the **partial repeal** of the CoN program in legislative discussions since the 1995 session, when the first bill to repeal the program was introduced on the request of the Department of Health. We have argued its ineffectiveness and the chilling effect it has on the health care marketplace when certain segments of the health care industry are granted monopoly positions by the state.

I want to reiterate to the Committee, and for the legislative record, that the WSMA's most recent proposal, in the form of a proposed substitute to House Bill 1952 (1998 session), only argued for **partial repeal** of the CoN program. I think this reiteration is important because it fits so well with the findings of the study. We knew there was

The Honorable Cathy McMorris
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Page 2

controversy surrounding many of the components of our position and we compromised over the years to address most of the concerns that were raised by the opponents of repeal. With much of the study finding limited or conflicting evidence, our more moderate, incremental approach continues to make sense.

Despite all the controversy during the past four sessions of the Legislature, the following incremental proposal from last session effectively states what would have been repealed (further changes would have required legislative action):

- Non-Tertiary hospital services and psychiatric hospital services (would have left complicated procedures such as transplants, specialty burns, neonatal intensive care, specialized children's services, etc. subject to CoN);
- Ambulatory Surgery Centers, with a provision to license them that contained charity care requirements; and,
- Kidney Dialysis Centers.

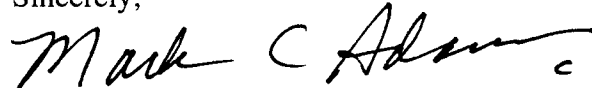
The following would not have been repealed:

- No changes in fourteen Washington state counties defined as frontier and remote by the Washington State Department of Health;
- Home Health and Hospice services; and,
- Nursing homes.

Should you have any questions or like to discuss this issue with us, please contact either Len Eddinger, our Director of Public Policy, or Cliff Webster, our legislative representative on this issue. Both can be contacted through our Olympia office at 360.352.4848.

Thank you again for conducting the study and allowing us to respond.

Sincerely,

A handwritten signature in black ink that reads "Mark C. Adams". The signature is fluid and cursive, with a small "c" at the end.

Mark C. Adams, MD
President

cc: WSMA Executive Committee
Thomas J. Curry, Executive Director/CEO
Len Eddinger, Director, Public Policy/Planning
Cliff Webster, WSMA Legislative Representative